

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

YESENIA K.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO. 1:21-CV-3039-TOR

ORDER DENYING PLAINTIFF'S
MOTION TO ALTER JUDGMENT

BEFORE THE COURT is Plaintiff's Motion to Alter Judgment (ECF No. 27). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Plaintiff's Motion to Alter Judgment (ECF No. 27) is denied.

BACKGROUND

On March 4, 2017, Plaintiff filed a Title XVI application for Supplemental Security Income. ECF No. Tr. 169-77. Following this Court's remand, Defendant

1 again denied Plaintiff's application. Tr. 830-853. Having carefully reviewed the
2 administrative record, this Court concluded, based upon the record as a whole, that
3 the ALJ's decision denying disability benefits to Plaintiff was supported by
4 substantial evidence. *See* ECF No. 25. Plaintiff then filed the present motion to
5 alter the judgment based on the argument that the Court failed to consider Dr.
6 Morgan's 2020 opinion. *See* ECF No. 27.

7 DISCUSSION

8 "A district court has considerable discretion when considering a motion to
9 amend a judgment under Rule 59(e)." *Turner v. Burlington N. Santa Fe. R. Co.*,
10 338 F.3d 1058, 1063 (9th Cir. 2003) (citing *McDowell v. Calderon*, 197 F.3d 1253,
11 1255 n.1 (9th Cir. 1999)). Absent highly unusual circumstances, relief under Rule
12 59(e) is only appropriate where (1) the moving party presents newly discovered
13 evidence to the court, (2) the court committed clear error or makes a decision that
14 is manifestly unjust, or (3) there is an intervening change in controlling law.
15 *McDowell*, 197 F.3d at 1255, n.1. "Clear error occurs when 'the reviewing court
16 on the entire record is left with the definite and firm conviction that a mistake has
17 been committed.'" *Smith v. Clark Cty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir.
18 2013) (internal citation omitted). To be clearly erroneous, a district court's
19 determination must "strike [the court] as wrong with the force of a five-week old,
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1 unrefrigerated dead fish.” *Ocean Garden, Inc. v. Marktrade Co., Inc.*, 953 F.2d
2 500, 502 (9th Cir. 1991).

3 Here, Plaintiff argues the Court committed clear error that was manifestly
4 unjust by failing to address the second opinion of Dr. Morgan in 2020. ECF No.
5 27 at 2-6. Although the Court made a typographical error in stating the ALJ gave
6 little weight just to Dr. Morgan’s opinion in 2019, the Court also considered the
7 ALJ’s analysis regarding Dr. Morgan’s 2020 opinion, which the ALJ also assigned
8 little weight. ECF No. 25 at 21-22. The ALJ provided largely the same reasons
9 for discounting the 2019 and 2020 opinions. *See* Tr. 843. The Court implicitly
10 addressed the 2020 opinion, finding the ALJ provided a specific and legitimate
11 reason for assigning the opinion little weight where Dr. Morgan did not account for
12 Plaintiff’s ongoing marijuana use. ECF No. 25 at 22 (citing Tr. 843: Dr. Morgan
13 did not consider ongoing marijuana use in 2020 opinion). The ALJ’s other reasons
14 for assigning the 2019 opinion little weight applied equally to the 2020 opinion:
15 Dr. Morgan again failed to explain his findings and the findings again conflicted
16 with treatment notes from 2017 and the opinion of Dr. Cohen, both of which the
17 Court found were specific and legitimate reasons to assign Dr. Morgan’s findings
18 little weight. *See id.* Because the Court considered the 2020 opinion, the Court’s
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1 Order contains no clear error nor any manifest injustice. *McDowell*, 197 F.3d at
2 1255, n.1. The Court declines to exercise its discretion to amend the Judgment.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 Plaintiff's Motion to Alter Judgment (ECF No. 27) is **DENIED**.

5 The District Court Executive is directed to enter this Order and furnish
6 copies to counsel. The file remains **CLOSED**.

7 DATED February 16, 2022.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge